Filed 8/20/19 Cope v. Castleton CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

KEVIN P. COPE, Plaintiff and Appellant, v. CASTLETON REAL ESTATE & DEVELOPMENT, INC., et al., Defendants and Respondents.	B288682 (Los Angeles County Super. Ct. No. BC622779)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael A. Johnson and Holly J. Fujie, Judges. Dismissed in part, affirmed in part.

Freilich & Popowitz and Neil M. Popowitz for Plaintiff and Appellant, Kevin P. Cope.

Law Office of John A. Tkach and John A. Tkach for Defendants and Respondents Castleton Real Estate & Development, Inc., Justin Huang, and Howard Ting.

Law Office of Tony M. Lu and Tony M. Lu for Defendant and Respondents YK America Group, Inc. and David Lu.

INTRODUCTION

Plaintiff Kevin P. Cope appeals following the trial court's grant of two summary judgment motions. Plaintiff argues there are disputed issues of material fact for his claims that defendant failed to pay plaintiff compensation owed following a real estate transaction. We dismiss the portion of his appeal seeking reversal of summary judgment in favor of defendants/ respondents YK America Group, Inc., David Lu, and Castleton Real Estate & Development, Inc. because there is no final judgment against those defendants. We affirm the trial court's summary judgment as to the remaining defendants/respondents Justin Huang and Howard Ting.

FACTS AND PROCEDURAL BACKGROUND

1. Underlying Relationship of the Parties

In 1997, plaintiff was working for defendant real estate developer YK. According to plaintiff, he was "consulting as a licensed real estate agent." YK's principal, defendant Lu, testified by declaration that YK "hired plaintiff to perform marketing and feasibility studies" on property owned by nonparty Tai Fu California Partnership.[1] Tai Fu owned a 430-plus-acre parcel of vacant land in Cabazon, California.[1] Sometime in the 1990s, Tai Fu decided to develop and sell the property, and engaged defendant YK as the developer. Defendant Ting was also affiliated with YK and Lu during this time.

In 1998, plaintiff left YK and transferred his real estate salesperson license to Castleton, a firm run by defendant Huang

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[1] The two principals of Tai Fu were George and Sharon Lin, whose name appears on several documents in the record.

that had a close relationship with YK. Castleton's principal Huang was the brother-in-law of YK's principal Lu. Plaintiff continued to do work related to the Tai Fu property. It appears that during this period YK and Castleton were collaborating on the Tai Fu project.

In 1999, Tai Fu's principals signed a one-year listing agreement ("the 1999 agreement") with plaintiff and his colleague, nonparty Hank Tsai.[2] The 1999 agreement is not the one sued upon here but its execution is predicate to the agreement at the heart of the first amended complaint. The 1999 agreement lasted one year and expired on September 11, 2000. It identified plaintiff and Tsai as the brokers on the sale. The sellers agreed to pay commissions of ten percent of the selling price, with five percent payable to plaintiff and Tsai collectively, and five percent payable to the "selling agent," which appears to be Castleton.[3] Around this time, plaintiff learned that the Morongo Band of Mission Indians (Morongo Band) was interested in purchasing the property, and plaintiff took steps to facilitate sale of the property to the tribe.

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[2] The 1999 agreement followed immediately upon the expiration of a 1998 listing agreement between the parties. The 1998 agreement between plaintiff and Tai Fu's principals expired on September 9, 1999.

[3] The 1999 agreement does not mention Castleton by name but both plaintiff and Tsai were working for Castleton at the time. The parties do not explain Castleton's absence from the agreement.

2. Plaintiff Leaves Castleton, and the Parties Sign the Termination Agreement

On March 27, 2000, prior to the expiration of the 1999 listing agreement, plaintiff left Castleton's employ. Upon his departure, Lu, Huang, Tsai and plaintiff signed an agreement that plaintiff had drafted. We sometimes refer to this contract as the "termination agreement." The termination agreement was attached to plaintiff's complaint. As the termination agreement is at the heart of the dispute, we recite it here verbatim in its entirety: [4]

> **Agreement**
>
> This is an Agreement between Castleton Real Estate Inc. (David Lu/Justin Huang) and Kevin Cope dated March 27, 2000.
>
> Kevin Cope willingly agrees to relinquish his listing interest in the subject property stated below but will retain one client as an exclusion to this Agreement. Kevin Cope registers the following prospective client: **The Morongo Band of Mission Indians**.
>
> If the Morongo Band of Mission Indians purchase[s] the subject property below, Castleton Real Estate Inc. will compensate Kevin Cope with ~~one third (33.3%)~~ [thirty percent (30%)] of the Listing Commission ~~(5%)~~

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[4] The parties added by hand the language we have placed in brackets to replace words they crossed out. The crossed-out words are denoted by strikethroughs. We have used the type face and form of capitalization as it appears in the agreement.

> [based on the total amount Castleton Real Estate Inc. receives. Kevin Cope also receives the full 5% of the Sales Commission]. This amount will be made payable directly to Kevin Cope from Escrow and may be considered a Referral Fee.
>
> Subject Property:
> 436.26 Acres of Vacant Land
> City of Cabazon, County of Riverside
> Cabazon, California
> PARCEL APN# 519-015-019
>
> Upon the signing of this Agreement, it is understood between all parties that Kevin Cope is discontinuing his employment with Castleton Real Estate Inc. All parties understand and agree that they have no further financial responsibilities or obligations toward one another except the exclusion stated above.
>
> We all willingly agree to the terms and conditions of this Agreement.

The termination agreement was dated March 27, 2000, the day plaintiff left Castleton's employ, and was signed by Lu (YK's principal), Huang (Castleton's principal), nonparty Tsai (who was also working on the sale), and plaintiff. The parties initialed the agreement next to strikethroughs and handwritten terms.

The 1999 listing agreement expired some five and a half months after the termination agreement was signed. Tai Fu did

not sell the property at any time covered by the 1999 listing agreement.

3. Sale of the Property

In 2006, six years after the termination of the 1999 listing agreement, Tai Fu, entered into a new listing agreement with Castleton to sell the property for $25 million. We sometimes refer to this contract as the 2006 agreement. While the 2006 agreement was in effect, Castleton obtained a full-price offer for the property from a buyer other than the Morongo Band, a man named Overton Moore. Tai Fu rejected that offer and demanded a sales price of $26 million from Castleton. When Castleton presented a $26 million offer from Moore, Tai Fu did not accept and negotiations broke down.

Plaintiff was not a party to the 2006 Castleton listing agreement nor was he involved in Castleton's 2006 efforts to sell the property. Instead, it appears that from 2000 to 2006, plaintiff independently worked directly for Tai Fu to facilitate the sale of the property to the Morongo Band. Differing accounts were that Tai Fu agreed to pay plaintiff directly either $25,000 or $50,000 for his services. Plaintiff would eventually sue Tai Fu and its owners for monies he claimed were due him. He alleged, "After Plaintiff's rezoning and marketing efforts, Plaintiff procured several offers from the Morongo Band of Mission Indians." He further claimed that he "procured an offer of $17,000,000 which [Tai Fu] refused to sign."[5]

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[5] It appears that this lawsuit was dismissed following a motion for judgment on the pleadings or "pursuant to a Notice of

In August 2007, Tai Fu engaged in a series of transactions that resulted in the transfer of the property to an entity called Cabazon Partners, which shortly thereafter conveyed the property to the Morongo Band for $20 million. Huang, one of Castleton's principals, testified in a declaration in support of the summary judgment motion in the present case that Castleton was not involved in the sale or ensuing escrow.

Castleton and YK also ended up suing Tai Fu and one of its principals for breach of contract based on the failure to pay compensation on the Cabazon land transaction.[6] Castleton and YK prevailed at trial, and judgment in their favor was entered on April 29, 2010. Tai Fu unsuccessfully appealed (*Castleton Real Estate & Development, Inc. v. Tai-Fu Cal. P'ship* (June 28, 2012, G043720) 2012 Cal.App.Unpub LEXIS 4873), and in 2013, the judgment was satisfied.

Settlement of Entire Case." The parties provide us with no information on the terms of any settlement.

[6] At oral argument, counsel for Castleton, Huang, and Ting asserted that plaintiff's claims fail because Castleton recovered damages for breach of contract from Tai Fu based on Tai Fu's failure to accept Overton Moore's offer, not based on a commission for the sale to the Morongo Band. Counsel further argued that payment of a listing commission for a Morongo Band sale was a condition precedent to Castleton's obligation to plaintiff under the termination agreement, and Castleton was not involved in that Sale. As this particular basis for summary judgment is fact intensive and the record is not well-developed on this issue, we do not address it.

4. Plaintiff's Lawsuit and Castleton's Cross-Complaint

On June 3, 2016, plaintiff brought the present lawsuit against YK, Lu, Huang, Ting, and Castleton, alleging claims for breach of contract, fraud, unjust enrichment, and unfair business practices. Plaintiff alleged that defendants owed him a $1,950,000 commission under the 1999 listing agreement for the sale of the property to the Morongo Band. He asserted that defendants assured him on multiple occasions between 2009 and 2014 that he would be compensated should defendants win their lawsuit against Tai Fu for their commissions.

On September 7, 2017, Castleton filed a cross-complaint against plaintiff for intentional and negligent interference with economic advantage.

On November 9, 2017, defendants YK and Lu moved for summary judgment/summary adjudication. The trial court granted summary judgment in favor of YK only. Of the four causes of action against Lu, the court granted summary adjudication of the fraud and unfair business practices claims, and denied summary adjudication of the breach of contract and unjust enrichment claims. The court did not enter a judgment against either YK or Lu.

The following month, on December 8, 2017, the remaining defendants – Castleton, Huang, and Ting – also moved for summary judgment/adjudication.[7] On February 21, 2018, the

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[7] Defendant Lu, who had achieved summary adjudication only on two of the four causes of action against him, sought to join in the motion filed by Castleton, Huang, and Ting. The trial court denied the request for joinder, concluding that Lu failed to

trial court granted summary judgment on all causes of action in favor of Castleton, Huang, and Ting. In the order granting summary judgment, the court agreed with defendants "that the breach of contract claim [against Castleton, Huang, and Ting] fails because the listing agreement upon which it is premised expired." The court concluded: "Given its plain language, the subject contract is premised on Plaintiff's interest in a listing agreement.[8] This is because the subject contract provides that Plaintiff relinquished his listing interest other than his listing interest in receiving commissions for a sale to the Morongo Band of Mission Indians. Thus, [Plaintiff]'s exclusion to his relinquishment presupposes he has any listing interest in the first place. Because according to Plaintiff, the contingencies were fulfilled on April 29, 2013 — well after the 1999 listing agreement expired in 2000 — Plaintiff no longer had any listing interest at that time so as to be entitled to commission under the subject contract."

The court continued: "Plaintiff argues that the subject contract does not refer to any specific listing agreement. . . . This is true. . . . However, the subject contract does require a 'listing interest' for commissions, and the subsequent January 12, 2006, listing agreement . . . between Tai-Fu and Castleton, did not include [Plaintiff] as an agent." Finally, the court observed that

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cite "any authority that a party may make multiple attempts at a motion for summary judgment."

8 The court's reference to the "listing agreement" was apparently to the 1999 listing agreement. The reference to the "subject contract" appears to be to the March 27, 2000 termination agreement.

plaintiff had failed to present evidence of any listing interest to which he was a party after the 1999 agreement had expired.

The court granted summary judgment on the fraud cause of action because it was premised on the alleged false promise that defendants would perform the agreement. Because there was no obligation to tender any payment, the fraud claim failed. The court found the unfair business practices claim was derivative of the fraud cause of action and the unjust enrichment cause of action failed because defendants were not obligated to tender plaintiff a commission.

In contrast to what happened – or did not happen – after the entry of the earlier orders as to YK and Lu, the court then entered judgment against plaintiff and in favor of defendants Castleton, Huang, and Ting shortly after its order granting summary judgment in the latter's favor. The court, however, did not adjudicate Castleton's cross-complaint, which remained pending in the trial court.

Plaintiff appealed from the two orders granting summary judgment/adjudication in favor of YK, Lu, Castleton, Huang, and Ting.

DISCUSSION

The procedural posture of this appeal presents a number of atypical issues. In the first two sections that follow, we explain why the appeals involving YK, Lu, and Castleton must be dismissed. We then consider the merits of the appeal as to the claims against Huang and Ting, and affirm those judgments.

1. We Dismiss that Part of the Appeal Addressing Plaintiff's Claims Against YK and Lu

Defendants YK and Lu argue that the appeal must be dismissed as to them because no judgment was entered against them, and because Lu's motion for summary judgment did not dispose of all claims against him. Plaintiff failed to file a reply brief to take issue with this argument.

Our analysis focuses on the difference between the entry of a summary judgment and entry of *orders* granting summary judgment or adjudication. Our review of the record discloses that the court signed orders granting summary judgment for all claims against YK and granting summary adjudication as to two of the four claims against Lu. There is no judgment entered against YK or Lu. As for YK, an order granting summary judgment is not appealable. (*Levy v. Skywalker Sound* (2003) 108 Cal.App.4th 753, 761, n. 7.) Instead, the appeal must be taken "from a judgment entered on the basis of the summary judgment order." (*Ibid.*; Code Civ. Proc., § 904.1, subd. (a)(1).)

Nor was there a final judgment in favor of Lu. Although plaintiff's failure to cause a final judgment to be entered as to YK may be attributable oversight, the defect as to Lu is more fundamental: summary judgment was not granted in Lu's favor, and there is no right to appeal from an order granting summary

adjudication that does not dispose of all claims against a party. "A judgment that disposes of fewer than all the causes of action framed by the complaint is not final in the fundamental sense as to any parties between whom another cause of action remains pending." (See *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 307.) We are without jurisdiction to consider an appeal from nonappealable orders, and thus dismiss the appeal as to YK and Lu. (*Adohr Milk Farms, Inc. v. Love* (1967) 255 Cal.App.2d 366, 369.)[9]

2. We Dismiss That Part of the Appeal Addressing Plaintiff's Claims Against Castleton

We also dismiss defendant's appeal of the summary judgment granted in favor of Castleton, but for a different reason. Castleton alone filed a cross-complaint, which the record discloses has yet to be resolved. A "judgment which resolves a complaint but does not resolve a cross-complaint pending between the same parties, is not final and not appealable, even if the complaint has been fully adjudicated." (*Westamerica Bank v. MBG Industries, Inc.* (2007) 158 Cal.App.4th 109, 132.) Due to the cross-complaint's pendency, there is no final judgment as between plaintiff and Castleton. We lack jurisdiction to proceed on this

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[9] We observe that the Notice of Appeal filed on March 18, 2016 has a checkmark after only one box: "Judgment after an order granting a summary judgment motion." The notice states that the dates of the "judgment or order in this case" are February 15, 2018 and February 21, 2018. Those were the two dates on which the trial court entered the respective orders granting summary judgment/adjudication.

part of the appeal. (*Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1250.)

Plaintiff argues that the "one judgment rule" does not apply to Castleton and cites *Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 9 (*Ram*). But *Ram* is not helpful. There, the court entered a final judgment as between the appealing plaintiff and the respondent/defendant, but not as to the defendants not included in the appeal. (*Ibid.*) The court explained that the appeal could proceed if there was finality as to all parties who were before the appellate court. (*Ibid.*) Here, there is a final judgment between plaintiff and defendants Huang and Ting, and the appeal can proceed as to these parties. As claims remain to be adjudicated between plaintiff and Castleton, we dismiss the appeal of the summary judgment entered in Castleton's favor on the complaint.

3. Appeal as to Huang and Ting: Applicable Law When Reviewing Contractual Claims on a Motion for Summary Judgment

The appeal as to defendants Huang (the CEO of Castleton) and Ting (an employee of YK and a sales agent for Castleton) is properly before us. We start with a brief summary of our standard of review in summary judgment appeals.

We review motions for summary judgment de novo. Courts must grant summary judgment motions when the parties' papers show there is no triable issue of material fact. (*Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal.App.5th 438, 443; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) Contract interpretation in the context of summary judgment " 'is solely a judicial function . . . unless the interpretation turns upon the credibility of extrinsic evidence,

even when conflicting inferences may be drawn from uncontroverted evidence.' " (*Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 527; *Brown v. Goldstein* (2019) 34 Cal.App.5th 418, 432.) When interpreting a contract, the court gives effect to the mutual intent of the parties at the time of contracting as long as it is discernable and lawful. (*WYDA Associates v. Merner* (1996) 42 Cal.App.4th 1702, 1709; *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264.) "Ordinarily, the objective intent of the contracting parties is a legal question determined solely by reference to the contract's terms." (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1126 (*Wolf*).)

Here, the parties agree that the termination agreement plaintiff attached to his complaint is the relevant document, and its interpretation governs this appeal. In the papers filed in the trial court, neither side offered conflicting extrinsic evidence as an aid to interpret the terms of the contract.[10] Nor in their

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[10] At oral argument, plaintiff's counsel argued that plaintiff submitted extrinsic evidence in plaintiff's declaration. We observe that plaintiff did not attach his own declaration to his opposition to the summary judgment motion brought by Huang and Ting. The only evidence attached to the opposition to motion was plaintiff's deposition, which does not assist plaintiff's case. In his deposition, plaintiff discusses his subjective thoughts on the contract and nothing more. "California recognizes the objective theory of contracts [citation], under which '[i]t is the objective intent, as evidenced by the words of the contract, rather than the subjective intent of one of the parties, that controls interpretation' [citation]. The parties' undisclosed intent or understanding is irrelevant to contract interpretation." (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944,

appellate briefs do the parties on appeal argue that evidentiary conflicts affect our interpretation of the termination agreement. "When there is no material conflict in the extrinsic evidence, the . . . court interprets the contract as a matter of law. [Citation.] This is true even when conflicting inferences may be drawn from the undisputed extrinsic evidence [citations] or that extrinsic evidence renders the contract terms susceptible to more than one reasonable interpretation." (*Wolf, supra*, 162 Cal.App.4th at pp. 1126-1127.) "The mutual intention to which the courts give effect is determined by objective manifestations of the parties' intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent conduct of the parties." (*Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 912.)

4. A Condition Precedent to Plaintiff's Compensation Was Not Satisfied

We agree with the trial court that there was nothing for plaintiff to enforce under the termination agreement because a condition precedent to defendants' duty to perform was not satisfied. The 2000 termination agreement states: Plaintiff "willingly agrees to relinquish his listing interest in the subject property stated below *but will retain one client as an exclusion to*

956.) Plaintiff did file a declaration in opposition to the YK summary judgment motion, but this declaration likewise discussed only plaintiff's subjective thoughts and did not provide evidence of the objective intent and shared understanding of the parties.

this Agreement." (Emphasis added.) The agreement then identifies the Morongo Band as the client and sets out the percentage payout plaintiff would receive if the property was sold to that one client. The trial court concluded that, in exchange for giving up his listing interest in the property as to all other clients, plaintiff had retained his listing interest as to the Morongo Band, but only if the property were sold while the 1999 listing agreement was still in effect. Plaintiff's listing interest in the property expired in September 11, 2000, long before the sale in question. After September 11, 2000, plaintiff was not a party to any other listing agreement covering the property. Without a valid listing interest in the property, the trial court concluded plaintiff's claim for compensation fails. We agree.

We adopt the trial court's plain language interpretation of the termination agreement. "When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible." (See Civ. Code, § 1639; see also Civ. Code, § 1638 ["The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity."].) Here, plaintiff was leaving his employment and sought to preserve compensation for his work on an identifiable listing contract if the listed property were sold to a single client under the 1999 agreement. The language of the termination agreement expressly tied plaintiff's payment to the 1999 agreement when it stated that Castleton will compensate plaintiff "with [thirty percent (30%)] of the Listing Commission (5%)." The 1999 listing agreement is the document that created the referenced listing commission, which was five percent under the 1999 agreement.

After the 1999 agreement expired, Castleton had no lawful claim against Castleton for compensation on a subsequent sale. Stated slightly differently, under the 1999 agreement, plaintiff had a listing on the property through September 11, 2000. The termination agreement acknowledged "his listing interest in the subject property," and allowed him retain one buyer under the 1999 agreement, the Morongo Band. But, plaintiff had no listing agreement at all beyond September 11, 2000. Thus, when plaintiff signed the termination agreement, he preserved his rights under the 1999 agreement as to the Morongo Band. But those rights expired by their express terms on September 11, 2000.

The termination agreement is not susceptible to a construction that plaintiff was to be paid based on a sale that took place seven years later – after the listing agreement had expired, and after Castleton (but not plaintiff) had entered into a new listing agreement with the sellers.[11] Plaintiff's proffered interpretation of the contract – that plaintiff is owed compensation for a sale long after the expiration of the 1999 listing agreement – would lead to an absurd result. (*Roden v.*

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[11] As we have already observed, in 2006 Castleton entered into a listing agreement with Tai Fu to sell the Cabazon land. Tai Fu rejected two full-price offers obtained by Castleton in 2006. Tai Fu eventually sold the property to a third person who in turn sold it to the Morongo Band, apparently utilizing in part plaintiff's assistance (independent of Castleton). Castleton prevailed in its lawsuit against Tai-Fu for compensation due under the 2006 agreement. Castleton's theory was that Tai Fu breached the 2006 listing agreement when it failed to accept the $26 million offer Castleton procured from Overton Moore.

AmerisourceBergen Corp. (2010) 186 Cal.App.4th 620, 651.) Under plaintiff's construction, if Castleton had arranged to sell the property to the Morongo Band 20 years from now, plaintiff would still be entitled to payment. There is nothing in the termination agreement that supports plaintiff's reading.

We also reject plaintiff's argument that, because the termination agreement calls for him to receive a "referral fee," he is entitled to compensation for a Castleton-related sale of the property to the Morongo Band ad infinitum. Plaintiff points to the following language: "If the Morongo Band of Mission Indians purchase the subject property below, Castleton Real Estate Inc. will compensate Kevin Cope with thirty percent (30%) of the Listing Commission based on the total amount Castleton Real Estate Inc. receives. This amount will be made payable directly to Kevin Cope from Escrow and may be considered a Referral Fee." Plaintiff argues that because the contract calls his payment a referral fee, it is not tethered to any specific listing agreement. Plaintiff ignores the use of the term "Listing Commission" in reference to the 1999 agreement, and he cites neither legal authority nor anything in the record that supports his interpretation.

We conclude that the use of the term "referral fee" does not undermine the other language in the 1999 agreement: plaintiff agreed to surrender all listing interests in the property in exchange for maintaining his listing interest as to the Morongo Band for the time period covered by the 1999 agreement. We must of course, give effect to all the terms of an agreement if we are reasonably able to do so. (See, e.g., Civ. Code, § 1641 [contract should be read as whole "so as to give effect to every part, if reasonably practicable, each clause helping to interpret

the other"]; *Advanced Network, Inc. v. Peerless Ins. Co.* (2010) 190 Cal.App.4th 1054, 1063.) Here, we may do just that. The first part of the termination agreement articulates that plaintiff maintains his then-current listing interest as to the Morongo Band for the limited time covered by the 1999 agreement, and the second characterizes part of the payment that might become due under the termination agreement as a referral fee. We find nothing irreconcilable.

5. The Second Cause of Action for Fraud Fails

Plaintiff's remaining causes of action fail for essentially the same reason. To prove fraud, plaintiff must show that defendants knowingly misrepresented a fact, with the intent to defraud, that plaintiff justifiably relied on their statements, and his reliance resulted in damage. (*Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 837.) Plaintiff alleged that defendants promised to pay him under the termination agreement when defendants themselves were compensated. We acknowledge that defendants were paid when the judgment in *Castleton v. Tai Fu* was satisfied. The rub is the same: as plaintiff was owed nothing under the termination agreement and, as he alleges no other consequences of defendants' so-called fraud, plaintiff was not harmed.

6. The Unjust Enrichment and Unfair Business Practices Claims Also Fail

The third cause of action, unjust enrichment, requires one party to receive and retain an unfair benefit at the expense of the other. (*Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1593.) In his first amended complaint, plaintiff alleged

defendants were unjustly enriched because they did not pay him pursuant to the 2000 termination agreement.

In the fourth cause of action, unfair business practices, plaintiff alleged that defendants deprived him of "the benefit of his contractual bargain and his share of the monies collected."

As we have explained, plaintiff lacked any listing interest in the property when it was sold in 2007 and, in fact, had no interest in the property after September 2000. As he lacked a listing interest, defendants did not owe him any compensation from the sale. As defendants owed him nothing, defendants did not receive an unjust benefit, nor did they engage in an unfair business practice.

DISPOSITION

We dismiss the part of this appeal that seeks reversal of the summary judgment in favor of defendants/respondents YK America Group, Inc., David Lu, and Castleton Real Estate & Development, Inc. The judgment is affirmed as to defendants/respondents Justin Huang and Howard Ting. All defendants/respondents are awarded their costs on appeal.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

KIM, J.